THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.21447 OF 2006

ORDER:

This writ petition is filed questioning the action of the respondent-Regional Passport Officer, Hyderabad, in impounding petitioner's passport vide proceedings dated 10.9.2004.

The petitioner was issued a passport bearing No.E4055697, wh valid up to 18.12.2012. It is stated that the petitioner is one of the Direct a power company by name M/s Spectrum Power Generation Li Kakinada.

On a complaint made by A.P. Transco, the sole buyer of the elec produced by the M/s Spectrum Power Generation Limited, alleging th Directors of M/s Spectrum Power Generation Limited had over run the of the project, Crime No.21/2004 was registered with the police, C Hyderabad for the offences under Sections 403, 405, 408, 409, 420, 46 471 of the Indian Penal Code. The petitioner, along with his father and brother, who were shown as the accused, filed Crl.M.P.No.2715 of 20 the Court of the Metropolitan Sessions Judge, Hyderabad, se anticipatory bail, and the same was granted by order dated 19.10. Though the State of Andhra Pradesh filed Crl. Petition No.50 2004 before this Court seeking cancellation of the anticipatory bail, the was dismissed.

It is not in dispute that in compliance with the directions of the le Metropolitan Sessions Judge in Crl.M.P.No.2715 of 2004, the petitione deposited his passport with the Deputy Superintendent of Police, Hyderabad, on 6.4.2005 and, the investigation in Crime No.21 of 20 still pending.

While so, the petitioner, who is stated to have been suffering fr chronic eye ailment for the past several years, intended to go for a che with Opticians at London, and was contemplating to approach the le Metropolitan Sessions Judge for relaxation of the conditions. In meanwhile, the petitioner came to know that his passport was impound the 2nd respondent vide order dated 10.9.2004.

It is stated that though he was served with a show cause notice 15.7.2004, calling upon to show cause as to why his passport should r impounded under Section 10(3)(e) of the Passports Act (for short "the 1967 on the ground of registration of Crime No.21/2004, thereafter, he not heard anything in the matter. As a matter of fact, he submitted a de reply dated 26.7.2004 stating that the proposed action to impoun passport is illegal and also sought for a personal hearing. Since no was served on him thereafter, he was under a *bona fide* impression th proceedings were dropped. It is claimed that he came to know abo impugned order recently, and in spite of several requests, the petitione not even provided with a certified copy of the said order dated 10.9.2 Hence, this writ petition.

I have heard the learned counsel for the petitioner as well as th respondent, and perused the material on record.

The impugned order is questioned primarily on the ground Section 10(3)(e) of the Act is not applicable, since Crime No.21/2004 i under investigation, and no proceedings are pending before any Cri Court.

It is further contended that the impugned order, which is pa without giving an opportunity of being heard, and which is devo reasons, is violative of fundamental principles of natural justice.

In support of the above submission, the learned counsel fo petitioner placed reliance upon the decision in **Smt. Menaka Gand Union of India**[1].

In the counter-affidavit filed by the 2nd respondent the fact tha investigation in Crime No.21/2004 is still pending has not been disp However, it is stated that the petitioner was issued a prior notice an impugned order was passed after considering the explanation given b petitioner. It is contended that since the fact that the petitioner is one accused in Crime No.21/2004 is not in dispute, the impugned order doe suffer from any infirmity and that the interference by this Court i warranted.

Section 10 of the Passports Act, 1967, which deals with vari impounding of passports may be extracted hereunder:

" **10. Variation, impounding and revocation of passports and travel documents:-**

10(1) ……

(2) ……

(3) The passport authority may impound or cause to be impounded or revoke a passport or travel document.

(a) …….

(b) ……..

(c) …….

(d) …….

(e) if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal Court in India;

(f) ……

(g) …….

(h) If it is brought to the notice of the passport authority that a warrant or summons for the appearance, or a warrant for the arrest, of the holder of the passport or travel document has been issued by a court under any law for the time being in force **or if an order prohibiting the departure from India of the holder of the passport or other travel document has been made by any such court** and the passport authority is satisfied that a warrant or summons has been so issued or an order has been so made.

……"

In the instant case, it is true that the investigation by the C.I.D. in C No.21/2004 is still pending and no charge sheet has been filed in the C As such, it cannot be said that any proceedings are pending agains petitioner before a Criminal Court. However, it is a matter of record th learned Metropolitan Sessions Judge, Hyderabad, while gra anticipatory bail directed the petitioner to surrender his passport t concerned C.I.D. Police. Such order prohibiting the petitioner's dep from India is one of the grounds enumerated under clause (h) of Se 10(3) of the Act, for impounding a passport. Though Section 10 (3) (e) Act is not attracted, since the power exercised by the 2nd respond impounding the petitioner's passport can be traced to Section 10 (3) the Act, the impugned action cannot be said to be without authority.

The further contention that the impugned order is violative of prin of natural justice is also without any substance since admittedly a cause notice was issued informing the petitioner about the proposed a under the Act and the explanation submitted by him was considered b

passing the impugned order.

I am also unable to hold that the impugned order is bad for w reasons, since it is based on an undisputed fact that the petitic departure from India is prohibited by virtue of an order passed competent court and the same is subsisting as on today.

For the aforesaid reasons, I do not find any substance i contentions raised by the petitioner. Accordingly, the writ petiti dismissed. No costs.

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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.21447 OF 2006

27th November, 2006.

Between:

M. Subrahmanyam. .. Petitioner.

And

The Union of India, represented by its Secretary, Ministry of External Affairs, Patiala House, Annexe, Tilak Marg, New Delhi and another. .. Respondents.

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[1] AIR 1975 SC 597.